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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,593	07/18/2003	Robert M. Killmer SR.	KILLMER - 1	2589

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EXAMINER

TUROCZY, DAVID P

ART UNIT	PAPER NUMBER
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1762

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No.		Applicant(s)	
	10/621,593		KILLMER, ROBERT M.	
	Examiner		Art Unit	
	David Turocy		1762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/18/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. The examiner notes the election of group II, claims 9-19, for examination and the subsequent cancellation of non-elect claims 1-8. Therefore claims 9-19 remain pending in the instant application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 14-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 requires "wherein said guide wheels roll along the traffic barrier *and physical changes in the traffic barrier*", however, such a phrase is confusing. For the purposes of applying art the guide wheels roll along the physical changes in the traffic barrier.

Claims 15 requires the limitation "advancing ... along the traffic barrier that are guided by the traffic barrier" however, it is unclear how the traffic barrier is actively guiding the nozzles as no currently required by the claim.

The dependant claims do not cure the defects of the claims from which they depend.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 9, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4793559 by Marlek, hereafter Marlek.

Claim 9: Marlek discloses applying a chemical to a road divider using spray nozzles oriented in a frame and rolling spray nozzle along traffic barrier so that the traffic barrier receives the spray material (Figures).

Claim 10: Markel discloses spraying on both sides of the traffic barrier (Figures).

Claim 11: The chemical solution can broadly be considered paint as required by the claim

6. Claims 9, 11, 12, 13, 14, 15, 16, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5865943 by Marty, hereafter Marty.

Claims 9 and 15: Marty discloses applying a cleaning solution and paint by using multiple sets of spraying nozzles each oriented to spray in predetermined areas and

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rolling frame along a traffic barrier so as to receive the spray material (figures, abstract, column 12, line 15-27).

Claims 11, 16 and 17: Marty discloses spraying cleaning solution from spray nozzles and paint other spray nozzles

Claim 12: Marty discloses using an engine to propel the spray nozzles along the length of the traffic barrier (figures, column 5, lines 51-67).

Claims 13-14: Marty discloses using guide wheels, which roll along the traffic barrier and adjusting the spray nozzles for changes in the dimensions detected (Column 5, lines 10-51).

7. Claims 9, 10, 11, 12, 13, 15, 16, 17, 18, and 19 are rejected under 35

U.S.C. 102(e) as being anticipated by US Patent 6908046 by Jordan, hereafter Jordan.

Jordan discloses a method for painting a fence, which broadly can be considered a "traffic barrier" as required by the claim. Jordan discloses providing spray heads that spray material, orienting the spray heads to spray an area and rolling the frame along the fence (Figures, abstract).

Claim 10: Jordan discloses spraying both sides of the fence (figure 3).

Claim 11: Jordan sprays paint.

Claim 12: Jordan discloses providing an engine to create self propulsion (Column 5).

Claim 13: Jordan manually detects dimensions and adjusts the spray heads to compensate for the change in dimensions (Column 7; lines 10-17).

Claim 15-17: Jordan discloses spraying paint using air and therefore a portion of the nozzles can be considered a first set of nozzles that spray a cleaning material because Claim 16 requires a cleaning material can be air, wherein the other portion of nozzles can be considered a second set of nozzles for spraying coating material.

Claim 18-19: Jordan discloses a vehicle that straddles the traffic barrier.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marlek in view of US Patent 2995307 by McMahon.

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Markel is applied here as applied above, however, Markel fails to disclose providing an engine to propel. However, McMahon discloses a method for attaching a spraying apparatus to an engine in order to cover large areas with spray with efficiency (column 1, lines 1-30). Therefore it would have been obvious to one of ordinary skill in the art to have modified Markel to use the engine of McMahon with a reasonable expectation of successfully providing a more efficient manner of coating the traffic barrier.

11. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted state of the art ("ASA") in view of Marty.

The admitted state of the art discloses a method for maintenances for cement traffic barrier by cleaning using solid abrasives and water and subsequently painting the cement barriers (0008-0010). However, ASA fails to disclose advancing a first set of nozzle to spray cleaning solution and a second set of nozzles to coat the material. However, Marty, teaching of an automatic maintenance of traffic barriers discloses providing a spraying apparatus including both cleaning nozzles, for spraying cleaning solution, and a painting nozzle (Column 12, lines 15-28).

Therefore, taking the references collectively, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified ASA to provide spraying and painting on a concurrent apparatus as suggested by Marty to reap the benefits of increased efficiency.

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12. Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over ASA in view of Marty as applied above and further in view of Marlek, and Jordan.

ASA in view of Marty is applied here as applied above, however, the references fail to disclose spraying apparatus that straddles the traffic barrier. However, Marlek discloses spraying a traffic barrier by providing a vehicle that straddles the traffic barrier so as to treat all sides concurrently (figures), and Jordan discloses an automatic spray apparatus that straddles the substrate and includes an engine to provide a manual free coating process (figures). Therefore, taking the references collectively, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified ASA in view of Marty to using an spraying structure that straddles the traffic barrier as suggested by Markel with a reasonable expectation of success because Jordan discloses a known self propelled coating apparatus that straddles the substrate to reap the benefits of efficiently cleaning and coating both sides of the traffic barrier concurrently.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Turocy whose telephone number is (571) 272-2940. The examiner can normally be reached on Monday-Friday 8:30-6:00, No 2nd Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David Turocy
AU 1762



TIMOTHY MEEKS
SUPERVISORY PATENT EXAMINER